the verdicts of juries, are not limited by the rule in respect to conflict of evidence, but may balance the weight of the evidence.[5]

In the Frost case, the court, though it gave its order in general terms, and hence authorized the appellate court to take the view that the order was based upon the insufficiency of the evidence to sustain the verdict, subsequently settled a bill of exceptions, showing that this was not one of the grounds upon which the court acted in granting the new trial. The Supreme Court holds that a bill of exceptions was an improper means by which to modify or change a previous order. The contrary holding would have been embarrassing to trial courts, for the practice, if tolerated, would have led to the result of an inquisition into the judge's motives by the losing party, in almost every case where a new trial was granted.

It is interesting to compare our intricate practice upon the subject of appeals and new trials with the English practice, which leaves far greater power to the judges than does our cumbersome statutory system. The English practice has been thus stated: "When the cause has been tried and the judges feel that they have all the facts before them so that they are entitled to give a judgment that will finally settle the matters in difference between the parties, they are entitled to give such a judgment, though the practice involves, I will not say usurpation by the judges, but a partial transfer to them of the functions of the jury."[6] And in the case from which the language is quoted, an appellate court exercised the same functions with regard to the verdict. Such a practice is, of course, not sanctioned by our statutes.[7]

Is it not a singular phenomenon that in America, generally, judges, who are elected for short terms by the people and who are in some cases subject to recall by popular vote, should be hampered at every step by constitutional and statutory provisions forbidding them frequently from administering speedy and substantial justice, while in England, though the judges are appointed by the Crown and practically irremovable, their power to model procedure to suit the justice of the particular case is very little controlled by statute? Is it possible that we have conceived of law and justice as something mechanical rather than as something organic? O. K. M.

Attorneys at Law: Inherent Power of Disbarment.—The decision in State Bar Association v. Sullivan,[1] just reported, though decided in November, 1912, by special judges appointed by the Governor of Okla-

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[5] Gordon v. Roberts, (1912) 162 Cal. 506, 509, 123 Pac. 288, 289.

[6] Williams, J., in Pearce v. Lansdowne, (1893) 69 Law Times Rep. 316, quoted by Thayer, Preliminary Treatise on Evidence at Common law, p. 340.

[7] Mitchell v. Hackett, (1860) 14 Cal. 661, 667.

[1] 131 Pac. 703 (Nov. 22, 1912).

homa to act in the place of the regular judges of the Supreme Court of that State,—the latter being disqualified because of interest,—presents some interesting questions with respect to the general power of courts to disbar attorneys. The respondent published an outrageous libel charging the Governor, the Supreme Court Judges, the Attorney General, and other State officials, with all sorts of crime. Though no proceedings seem to have been taken against him, civil or criminal, the publication of the libel was made the ground of revoking his license to practice. Two of the five special judges dissented.

The opinion of the Court, so far as it involves the general power of a court to protect itself against contempt and to regulate the conduct of its officers when detrimental to the welfare of the community, follows what seems to be the prevailing view,—that expressed in Ex parte Wall by Justice Bradley in delivering the opinion of the United States Supreme Court, against the dissent of Justice Field. That view is that an attorney is subject to discipline at the hands of the courts before which he practices for words spoken and acts done even though they be outside of his professional work.[2]

But much more was involved in the Oklahoma case than the general power of a court over its officers. The whole matter of disbarment had been covered by elaborate statutory provisions, and the Legislature of the State had especially enacted that an attorney's license should not be revoked for any other causes than those enumerated in the statute. The publication of a libel on the court not in the presence of the court was not one of the enumerated causes. More than that, the Legislature had provided that disbarment proceedings must be instituted within one year after the act upon which the proceedings are based was committed.[3] The Court refused to give effect to the statutes, holding that the power to disbar attorneys was essentially a judicial function, and that it could not be abridged by legislative act.

It may be doubted whether the Court did not confuse inherent and essential powers. It is very clear that some powers are absolutely essential to enable a court to pronounce and carry out its decrees. It is also clear that a court may, in the absence of legislation, make rules in respect to the admission of attorneys, as it may also with respect to their disbarment. But it is by no means so clear that a court cannot exist without these powers. In fact, with respect to the higher branch of the legal profession in England, the Courts never did have anything to do with the calling to the bar of the barristers, nor with matters of discipline. These matters are left to the various Inns or Societies, membership in which entitles one to appear before the Courts. It is true that an appeal lies from the Benchers of the Inn to the Judges,

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[2] Ex parte Wall, (1882) 107 U. S. 265.

[3] See the statute of limitations set forth and discussed in the case of In re Mosher (1909) 24 Okl. 61, 102 Pac. 705; 24 L. R. A. (N. S.) 530 20 Ann. Cas. 209.

but the power of the judges is that of visitors and not that of a Court. The English judges act merely for the purpose of composing differences between the members of the voluntary societies. The admission and discipline of attorneys depends altogether on acts of Parliament.[4] In this country, the matter of admission was in some colonies left to the executive.[5]

In holding that the Legislature has no power to control the matter of disbarment, the principal case goes beyond any case that we have found, though there is authority to the effect that the power of admission to the bar is a strictly judicial matter, and that it is not competent for the Legislature to permit admission upon certificates from a law school.[6] Without maintaining that there may not be extreme situations where it might be necessary for a court to hold that the power to disbar an attorney was essential for the preservation of the independence of the judiciary, it can rarely be the case that the act of an attorney performed outside of his professional duties may affect the proper conduct of the Court's business. Above all things, for the proper working of the delicate machinery of our constitutional government, perfect harmony between the departments of government is essential. A very wise man said: "Under no system can the power of courts go far to save a people from ruin; our chief protection lies elsewhere."[7] It should, indeed, be an extreme case where the Court is forced to assert its independence of the Legislature.

While the doctrine of inherent power seems to have been stretched beyond the proper point in the principal case, there does seem to be a proper place in the American constitutional system for its application. Many courts have held that in such matters as the disbarment of attorneys, the Legislature should not be deemed to intend to cover the whole field, unless the intention positively appears. In other words, it is usually held that the enumeration of certain grounds for disbarment in a statute is not to be construed as an exclusion of all other grounds not enumerated.[8] The California Court is most often cited against the doctrine of inherent power with reference to the matter of disbarment. But though the statements made by that Court in several cases are sweeping, the precise point has never been before it, doubtless owing

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[4] 19 Am. Law Rev. at p. 699.

[5] Argument of Theodore W. Dwight in Matter of Cooper, (1860) 11 Abb. Prac. 301, 316. Charles Warren: History of the American Bar p. 95.

[6] In re Day (1899) 181 Ill. 73, 54 N. E. 646. For a defence of this view, see Blewett Lee, The Constitutional Power of Courts over Admission to the Bar, 13 Harvard Law Review, 283.

[7] Thayer: Legal Essays, p. 39.

[8] In re Mills (1850) 1 Mich. 392, 394-6; Bar Association v. Greenhood (1897) 168 Mass. 169, 46 N. E. 568, 574; In re Smith (1906) 73 Kans. 743, 85 Pac. 584, 586; State v. Gebhardt (1901) 87 Mo. App. 542, 549; In re Evans, (Jan. 30, 1913) 130 Pac. 217, 224-5 (Utah). A valuable note in 17 Ann. Cas. 592 refers to other cases.

to the fact that the present legislation is quite elaborate, and it has not been necessary to invoke the doctrine of implied powers.[9] It can hardly be supposed, for instance, that the Court prior to 1859 had no power to disbar attorneys, save for the two grounds then specified by statute,—conviction of a crime and wilful disobedience of an order of court. It was not until 1859 that the violation of his oath of office rendered an attorney liable for disbarment.[10]. But it cannot have been the law prior to that date that an attorney might, for example, abuse the confidence of his client without redress. The doctrine of inherent powers is necessary for the purpose of supplying legislative deficiencies. But recognizing this fact, it does not follow that courts must say as one very able judge does, "that it is a pleasure to defer to all reasonable statutes on the subject." [11] It is better that courts should frankly admit that the power to regulate admission to practice and to disbar attorneys is not beyond legislative regulation, and, whether the statute is reasonable or not, it should be enforced by the courts as a matter of duty and not as a matter of "pleasure."

O. K. M.

Bills and Notes: Alternative Payees.—The Uniform Negotiable Instruments Law has at the present time been adopted in nearly all American jurisdictions. According to the latest sources of information available, it is now in force in thirty-nine of our states. In England the Bills of Exchange Act, passed in 1882, is a similar piece of legislation. In a number of particulars these statutes have effected a change from the common law rules regarding commercial paper. Recently the Supreme Court of Oregon, in dealing with one of the provisions of the Uniform Negotiable Instruments Law, in force in that state, called attention to the fact that at common law the rule as to the matter in question would have been otherwise.[1]

A note is made payable to alternative payees,—to A or B. Is the instrument a valid promissory note, and, if possessing the other necessary formal requisites, negotiable? The Uniform Negotiable Instruments Law and the British act clearly answer the question in the affirmative, as they provide that the instrument may be made payable to

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[9] In re Collins (1905) 147 Cal. 8, 13, 81 Pac. 220, 222; Ex parte Yale, (1864) 24 Cal. 243, 245, 85 Am. Dec. 62, 64. So far as the question of admission to the bar is concerned, the California Court has recognized the power of the legislature, In re Mock (1905) 146 Cal. 378, 80 Pac. 64.

[10] Statute of Feb. 19, 1851, in Compiled Laws, 1850-1853, p. 206; Statute of March 2, 1859, in Statutes 1859, p. 60.

[11] Ryan, C. J., In matter of Goodell, (1875) 39 Wis., at p. 240.

[1] Page v. Ford, (April 29, 1913) 131 Pac. 1013.